

Hon. James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ISOMEDIA, INC., a Washington corporation,

Plaintiff,

v.

SPECTRUM DIRECT, INC., a California corporation; VISTAPRINT USA, INC., a Delaware corporation; THE LEGAL LEADS NETWORK, INC., a Florida corporation; AARP, INC., a Washington, DC non-profit corporation; PROSPER, INC., a Utah corporation; COSTA MARKETING GROUP, INC., a Florida corporation; PARAGON SOLUTIONS NETWORK, INC., a California corporation; MEDICAL HAIR RESTORATION, INC., a Florida corporation; GREEN BULLION FINANCIAL SERVICES, LLC, a Florida limited liability company; EDUCATION DYNAMICS, LLC, a Washington limited liability company; DIRECT WINES, INC., a Delaware corporation; AMERICAN SATELLITE, INC., a Nevada corporation; and JOHN DOES, I-CC,

Defendants.

No. 08-CV-1733-JLR

**VISTAPRINT USA INCORPORATED'S
SURREPLY PURSUANT TO CIVIL RULE
7(G) REQUESTING THAT THE COURT
STRIKE PART OF PLAINTIFF'S REPLY TO
DEFENDANTS' RESPONSE TO PLAINTIFF'S
REQUEST FOR LEAVE TO FILE
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

1 **I. INTRODUCTION**

2 Plaintiff Isomedia improperly utilized the first part of its Reply to Defendants' Opposition
3 to Isomedia's Motion for Leave to File a Second Amended Complaint ("Reply") (Dkt. 30), as a
4 surreply to VistaPrint USA, Incorporated's ("VistaPrint's") Motion to Dismiss. (Dkt. 10.)
5 VistaPrint is therefore filing this surreply pursuant to C.R. 7(g) requesting that the Court strike
6 page 1 line 22 through page 4 line 12 of Isomedia's Reply.

7 **II. ARGUMENT**

8 Defendants' Opposition to Isomedia's Motion for Leave to File a Second Amended
9 Complaint narrowly addressed legitimate legal objections to the Second Amended Complaint,
10 including prejudice resulting from Isomedia's delay in moving to file its Second Amended
11 complaint, and the futility of Isomedia's proposed amendments. (Opposition to Plaintiff's
12 Motion for Leave to File a Second Amended Complaint ("Opposition"), at 7:3-28, 8:15-19) (Dkt.
13 24); *see also DCD Programs Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (finding that
14 leave to amend may be denied based on "bad faith, undue delay, prejudice to the opposing party,
15 and the futility of amendment.") Rather than respond to these legitimate objections, Isomedia
16 utilizes the first three and a half pages of its Reply to raise new arguments in support of its
17 Motion that are unresponsive to Defendants' Opposition.

18 Indeed, the content of Isomedia's Reply appears to address many of the arguments raised
19 by VistaPrint in its Motion to Dismiss. Isomedia explicitly states in its Reply that "[u]nder the
20 guise of the pleading requirements of FRCP 8, the Defendants are really asking that Isomedia
21 make the thousands of spam that Defendants sent a part of the complaint..." (Reply, 4:6-8.)
22 Neither Isomedia's initial Motion, nor Defendants' Opposition raise the pleading requirements of
23 Federal Rule of Civil Procedure 8. Rather this argument, as well all of the content on page 1 line
24 22 through page 4 line 12 of Isomedia's reply, is most properly characterized as a surreply to
25 VistaPrint's Motion to Dismiss.

26 It is well established that "[t]he district court need not consider arguments raised for the
27 first time in a reply brief." *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). And a surreply
28 of this type is not proper unless requested by the court. *See* 12-C Hon. William W. Schwarzer, *et.*

1 *al. Rutter Practice Guide: Federal Civil Procedure Before Trial, National Edition* § 12:110
2 (2008) (noting that there is no reply to reply briefs). The Court should therefore strike these
3 arguments as improperly raised in Isomedia's Reply.

4 **III. CONCLUSION**

5 VistaPrint therefore requests that this Court strike page 1 line 22 through page 4 line 12 of
6 Isomedia's Reply as improper.

7
8 Dated: March 11, 2009

/s/Joseph S. Leventhal

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